

**CITY OF GARDNER
BOARD OF ZONING APPEALS
Staff Report**

TO: Board of Zoning Appeals

FROM: Frederick L. Sherman, AICP, Community Development Director

DATE: August 18, 2004

SUBJECT: BZA-04-02; Consider a variance request from Section 16.505.6.B. Side Yard Setback in the R-2 district (Two Family Residential District) to reduce the required setback from seven feet (7') to six feet (6') on property located at 409 & 413 W. Hawthorn Street

1. **APPLICANT:** Durflinger Homes, Inc.
2. **REQUESTED ACTION:** Consider a variance request from Section 16.505.6.B Side Yard Setback in an R-2 (Two-Family Residential District) to reduce the required setback.

"The unit located at 413 W. Hawthorn Street was constructed with a 1' encroachment on the west side yard setback due to an incorrect dimension on the submitted plot plan for the structure. After the surveyors pinned the building according to the erroneous plot plan, the foundation crew located the building 1' to the west of the hubs causing the encroachment."
3. **LOCATION:** The property is located at 425 and 429 W. Hawthorn Street – Lot 7, Block 3, Holtgraver Addition No. 1.
4. **PROPERTY DESCRIPTION:** This property is currently zoned R-2, Two-Family Residential District.
5. **ZONING ORDINANCE PROVISIONS:** The following zoning ordinance provisions are applicable to this variance request:

16-505 DISTRICT "R-2" TWO FAMILY RESIDENTIAL DISTRICT.

503.6 YARD REGULATIONS.

- A. **FRONT YARDS:** The front yard shall be a minimum of 25 feet in depth measured from the front lot line if the street right-of-way is 60'. When the street right-of-way is 50', or for lots fronting a cul-de-sac, the minimum front yard shall be 30'.
- B. **SIDE YARDS:** No side yard shall be less than seven feet (7'), no side yard shall be less than seven (7) feet. The total side yard shall equal or exceed 20% of the lot width at the front building line. Buildings on corner lots shall provide a side yard on the street side of not less than twenty (20) feet.

- C. REAR YARDS: No rear yard shall be less than twenty (20) percent of the depth of the lot, or with a minimum of twenty-five (25) feet.

16-404 DEFINITIONS

BUILDING, PRINCIPAL. A building, including covered porches and paved patios, in which is conducted the principal use of the lot on which it is situated. In any residence district any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

FRONT. The part or side of any building or structure facing the street or frontage road which is used as the basis for establishing the permanent address for that building or structure, as listed in the City Directory.

LOT. A parcel of land occupied or to be occupied by one main building, or unit group of buildings, and the accessory buildings or uses customarily incident thereto, including such open spaces as are required under these regulations, and having its principal frontage upon a public street. A lot as used herein may consist of one or more platted lots, tracts, or tracts as conveyed, or parts thereof.

LOT, FRONT. The front of a lot shall be that narrowest dimension abutting a street right-of-way. On corner lots which have two equal sides which abut on a street right-of-way, either side may be considered the front of the lot

LOT LINE, SIDE. Any lot boundary line not a front or rear line thereof. A side line may be a party lot line, a line bordering on an alley or place, or a side street line.

YARD. An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the building shall be used.

YARD, FRONT. A yard across the full width of the lot extending from the front line of the main building to the front line of the lot.

YARD, REAR. A yard between the rear lot line and the rear line of the main building and the side lot lines.

901.2 YARD EXCEPTIONS.

- D. Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, cornices, chimneys, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall extend into a court more than six (6) inches nor into a minimum yard more than thirty (30) inches; and provided further that canopies or open porches having a roof area not exceeding sixty (60) square feet may project a maximum of six (6) feet into the required front or rear yard and existing open porches extending into the required yard shall not be enclosed.

6. **ZONING ORDINANCE VARIANCE REQUEST:** A variance from Section 16-505.6.D would need to be granted to allow final occupancy of the residences. The duplex located at 409 and 413 Hawthorn was constructed in late 2003 and early 2004 (Building Permit #03-744). The duplex units along this segment of W. Hawthorn Street are not centered in the middle of each lot. Rather, the buildings are offset from the center of the platted lot to allow for

the use of a shared, or common driveway between non-attached units. The shared driveway and a parking court help reduce the visual impact of driveways along the streetscape of areas zoned for duplexes, and also accommodate development of duplex units that are not mirrored – where each half is identical mirror image of itself. The title company discovered the encroachment in the side yard setback based on a final mortgage survey of the property.

7. **VARIANCE CRITERIA:** Pursuant to the requirements of K.S.A. 12-715 and Section 16-1601.3 of the City Code, The Board of Zoning Appeals may grant a variance from the Zoning Ordinance provided that the Board finds that all of the following five conditions have been met. The applicant has provided as part of the application materials their response to the five conditions, which is included as an attachment to this staff report.

Does the variance request arise from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant? Yes. The property is in a developing two-family residential subdivision. The applicant hired a reputable engineering company to complete a building survey for construction of a two-family residence. A plot plan denoting all setbacks was submitted to the City and approved with the issuance of a building permit. The duplex units in this subdivision are slab-on-grade construction with the use of a spread footing, so the exact measurement of the side of a structure is not determined at the time of inspection approval and construction of the initial sub-grade footing. The concrete contractor who set and poured the final floor slab made a 1' correction error in layout of the final concrete floor of this building. The buildings are not centered in the middle of the lot due to the unique design and layout of the units using shared driveways and parking courts.

Will the granting of the permit for the variance adversely affect the rights of adjacent property owners or residents? No. Many of the duplex units in this subdivision are constructed at the minimum side yard setback of 7' feet. The side of the building that encroaches into the side yard is not flat. It includes a bay projection for a direct vent fireplace.

Will the strict application of the provisions of the Zoning Ordinance of which the variance is requested constitute unnecessary hardship upon the property owner represented in the application? Yes. The applicant will not be able to meet the required rear yard setback; therefore, a final certificate of occupancy in compliance with the zoning ordinance cannot be issued. Strict application would require the structure to be removed, altered, or remain unoccupied. This would be a tremendous hardship to the applicant.

Will the variance desired adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare? No. The variance would not be noticeable. The pattern of development of duplexes along this segment of street is such that a 1' variance could not be determined without exact measurements. The building meets all adopted building code requirements. The encroachment of 1' into the side yard setback does not impact the safety of the building.

Will the granting of the variance desired be opposed to the general spirit and intent of the Zoning Ordinance? No. The setback standards are required to provide minimum separation for life safety purposes, as well as privacy of yard area for individual property owners. Setbacks can be varied. Side yard setbacks in Gardner are typically required to be seven feet in the R-2 Zoning District unless the Planning Commission and City Council approve a lesser setback in association with a planned development. Staff does not see any life safety issues related to this application.

8. **STAFF RECOMMENDATION:** Staff recommends that the Board of Zoning Appeals grant a variance to Section 16.505.6.C. Side Yard Setback in the R-2 District of the Zoning Ordinance to reduce the required setback from seven feet (7') to six feet (6') on property located at 409 and 413 W. Hawthorn Street – Lot 7, Block 3, Holtgraver Addition No. 1.